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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 209 (RMB)
Telephone Conference

5 TERRANCE MORGAN,

6 Defendant.

7 -----x

8 New York, N.Y.
9 May 5, 2020
12:00 p.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

16 ROBERT SOBELMAN

17 Assistant United States Attorney

18 SAM SCHMIDT

Attorney for Defendant

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(The Court and all parties appearing telephonically)

THE COURT: So we're here today for sentencing following the Supreme Court's decision in the Gold case and other cases.

Can I ask everybody to mute their phones if they are not speaking? Thank you.

We know that the United States Sentencing Guidelines are no longer mandatory. Instead of mandatory guidelines, the court reviews factors listed at 18, United States Code, Section 3553(a), which I've done before coming to this conference today.

Those factors include the nature and the circumstances of the offense or crime, the history and characteristics of the defendant, Mr. Morgan, the need for the sentence imposed to reflect the seriousness of the crime, to promote respect for the law, to provide a just punishment, to afford adequate deterrence to criminal conduct, to protect the public from further crimes, to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner.

Doing that, we look at the kinds of sentences that are available at the time of sentence and the sentencing range established under the sentencing guidelines, even though those are no longer mandatory. We look at any policy statements issued by the United States Sentencing Commission that may

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1 apply. We seek to avoid unwarranted sentence disparities among
2 similarly situated defendants, and in appropriate cases, to
3 provide for restitution.

4 We start with a guidelines analysis. The court
5 actually determines here that the guideline range would be
6 41 to 51 months of incarceration based on an offense level of
7 20 and a criminal history category of III. But I hasten to add
8 that I am aware that the guideline range that I've computed
9 differs from that in the plea agreement, and that the plea
10 agreement does not reflect a particular conviction on March 14,
11 2018, for theft of property, among other things.

12 So the defendant, Mr. Morgan, was serving a term of
13 probation for these offenses at the time of this instant
14 offense. Anyway, that is what accounts for the difference
15 between 41 to 51 months under the guidelines and 33 to
16 41 months as agreed to in the plea agreement here.

17 In reviewing the 18 U.S.C. Section 3553(a) factors,
18 this is what I have come up with. Mr. Morgan pled guilty
19 before Magistrate Judge Aaron on October 17, 2019, to a
20 conspiracy to commit bank fraud. He pled guilty pursuant to a
21 plea agreement that I mentioned a minute ago, which was dated
22 July 15, 2019, in which there was a stipulated or agreed to
23 guideline range of 33 to 41 months. I accepted the guilty plea
24 on or about October 31, 2019.

25 Mr. Morgan is 24, a citizen of Liberia and a permanent

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1 resident of the United States, single, unmarried and has two
2 children. According to the probation report, Mr. Morgan's
3 biological father died when he was a toddler and the
4 whereabouts of his mother are unknown. He, Mr. Morgan,
5 immigrated to the United States from Liberia with his other
6 family members when he was approximately six years of age. He
7 reported to probation that his transition in the United States
8 was difficult, particularly at a young age, in that the family
9 members and others he was with lacked adequate food and
10 clothing and resided with other refugees in a two-bedroom
11 apartment. He also reported to probation that he was teased in
12 school because he was a poor immigrant.

13 Mr. Morgan further advised probation that his mother
14 punished him by beatings with belt buckles and other
15 inappropriate behavior at paragraph 74 of the presentence
16 investigation report, and he reported to probation that he left
17 his mother's home when he was age 16 and has not communicated
18 with her since that time. So it would be some eight years, if
19 my math is correct.

20 There are somewhat conflicting accounts of Mr. Morgan
21 and his relationship to other family members. I refer you to
22 presentence report paragraph 78 and 80, for example. Defense
23 counsel, with respect to several of those issues, has stated
24 that the account of Mr. Morgan's relationship with other
25 relatives is incorrect in several respects.

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1 Mr. Morgan has denied any chronic physical medical
2 issues. He noted that he has been experiencing flashbacks and
3 nightmares from the war, Civil War, I imagine, at paragraphs 89
4 through 91. He reported some prior use of marijuana, but
5 indicated that he had stopped smoking in 2018 because it made
6 him sluggish. It is somewhat unclear what Mr. Morgan's
7 educational level is. The presentence report notes that he has
8 some college education and also notes that verification from
9 two different high schools was requested but not received for
10 purposes of this presentence report.

11 Mr. Morgan has some prior employment history as a used
12 car salesman and in various other capacities working at Macy's,
13 for example, and Kohl's department stores. When he was a
14 teenager, he was employed in a barber shop and is also a rap
15 musician.

16 His prior criminal history, that includes assault in
17 the second degree, theft of less than \$100, theft by
18 shoplifting, theft of property and criminal simulation. It
19 appears that there may be two warrants outstanding. One may
20 have been issued while Mr. Morgan was in federal custody and
21 the other appears to date back to 2016 in Baltimore County.

22 He was initially arrested on January 23, 2019, and
23 detained. He was released on February 22, 2019. And then on
24 March 6, 2019, he was detained on an unrelated matter and
25 subsequently transferred to the Southern District.

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1 By submission dated April 6, 2020, which by the way
2 has been supplemented on several occasions, including a very
3 recent submission which I saw for the first time today which
4 describes an official evaluation of the health conditions at
5 the MDC, the Metropolitan Detention Center, which is rather
6 startling. I have no reason to believe it is anything but
7 accurate and I found it very helpful. I'll make some reference
8 to that submission in a couple minutes.

9 Defense counsel states that when Mr. Morgan pled
10 guilty, both the government and the defense believed that the
11 guidelines range was 33 to 41 months. Because that range was
12 driven by a very large intended loss that the undercover
13 officer had established. He, Mr. Schmidt, Mr. Morgan's counsel
14 contemplated asking the court for a sentence of 15 to 18 months
15 as an appropriate one.

16 Now, this is defense counsel talking, that it has been
17 determined that Mr. Morgan's criminal history category is III
18 as opposed to I, his guideline range is acknowledged to be 41
19 to 51 months, as the court has determined and as I mentioned
20 before.

21 Under normal circumstances, says Mr. Schmidt, I
22 believe that a similar sentence or a slightly higher one would
23 be appropriate. However, because of extraordinary
24 circumstances that our country is in, referring to the
25 coronavirus, especially in the New York metropolitan region,

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1 and that as of April 20, 2020, Mr. Morgan will have served some
2 14 months in the custody of the Bureau of Prisons ICE, I-C-E
3 in caps, and local custody. He, Mr. Schmidt, on behalf of
4 Mr. Morgan is requesting a sentence of time served.

5 Defense counsel notes the difficult upbringing that
6 Mr. Morgan has had and how, at the age of six, he was a refugee
7 with members of his extended family, who had little, if any,
8 legal paperwork documenting who they were and what their
9 relationship was one to the other.

10 Defense counsel states, I have found that almost all
11 of Mr. Morgan's family has been less than forthcoming in
12 describing the relationships of the family members who escaped
13 to the United States. It appears that none of the extended
14 family are U.S. citizens and still are lawful residents.

15 The ICE agent who investigated Mr. Morgan because of
16 this and prior cases informed defense counsel that Ferina,
17 F-e-r-i-n-a, Dokie, D-o-k-i-e, who was listed as Mr. Morgan's
18 mother, had applied for citizenship at least two times and has
19 been turned down. As a result of the confusion and fear, both
20 the presentence report and letters from Mr. Morgan's family
21 reflect differing relationships. Perhaps the most accurate
22 description was presented by Derrick, D-e-r-r-i-c-k, Dokie,
23 D-o-k-i-e.

24 Defense counsel also asked the court to consider the
25 defendant's role in the offense. Counsel states that while

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1 Mr. Morgan may not have met all of the requirements to be a
2 minor participant, that is a term of art, his lack of authority
3 and discretion in the remuneration he expected to receive is a
4 very small portion of the fraud.

5 Defense counsel also states that codefendant Kamara,
6 K-a-m-a-r-a, is a friend of Derrick Dokie, D-o-k-i-e, Derrick
7 Dokie Junior, the relative Mr. Morgan was living with.
8 December 2018, Mr. Kamara told Mr. Morgan that he had a
9 Nigerian friend who obtained bank information that could help
10 access a bank account to get money. The Nigerian needed
11 someone who spoke well and could communicate with the person
12 who had the skills to use the bank information to access this
13 account. Mr. Kamara has a significant accent, while Mr. Morgan
14 is very well spoken. Mr. Morgan was told that his share of the
15 illicit activity would be \$10,000. Knowing that it was clearly
16 illegal and wrong, but being in financial need, especially to
17 help support his children, he, Mr. Morgan, accepted the offer
18 and participated in the crime.

19 Defense counsel also asks the court to consider the
20 conditions of Mr. Morgan's confinement in general and
21 especially during the coronavirus pandemic. Defense counsel
22 notes that upon completion of his SDNY sentence, Mr. Morgan
23 will likely be transferred to ICE custody.

24 Defense counsel states that he has been told that he
25 will likely be transferred to the Atlanta area, where his

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1 immigration case is pending. While the immigration process is
2 pending, he will remain in custody because of the present
3 conviction for an aggravated felony. Defense counsel's report.

4 Because of the present crisis, the health crisis, it
5 is impossible to know how long Mr. Morgan will be in custody
6 prior to being deported, which is, I guess, the likely next
7 step, but we'll hear more from defense counsel about this.

8 Defense counsel has submitted a letter written by the
9 defendant to the court. The defendant's letter states, among
10 other things, that Mr. Morgan has gained insight into his
11 behavior in connection with this offense. Defense counsel has
12 also submitted letters of support on behalf of Mr. Morgan, as
13 well as pictures of him with his children, which I have
14 reviewed.

15 The letters describe Mr. Morgan as a family man, as a
16 man with a generous nature, and as a man who has found solace
17 in music. One of the defendant's sisters wrote, Before the
18 arrest, Terrance and I volunteered at the Children's Refugee
19 Center in Clarkston, C-l-a-r-k-s-t-o-n, Georgia, every Friday
20 and Saturday for over ten years now. I've never met anyone
21 like my brother. He is truly an extraordinary young man,
22 caring, loving, bright, honest, family-oriented, but imperfect,
23 like we all are.

24 For all of his birthdays, Terrance would purchase
25 clothes and hygiene products and distribute them to the

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1 homeless and less fortunate people all around rather than
2 celebrating at a fancy restaurant. On Sundays after church,
3 Terrance would go to the hospitals and provide company to the
4 senior citizens, and then go out with friends to a bar. He
5 would help teach kids to play football and soccer after school,
6 and he would mentor them rather than going home after a long
7 day of work. That is a letter from N. Morgan.

8 By letter dated April 13, 2020, the government
9 requests a sentence within the stipulated guideline range of
10 33 to 41 months. The government makes several points. First,
11 it says a sentence within the stipulated guideline range would
12 appropriately reflect the nature and the seriousness of the
13 defendant's conduct.

14 The defendant and Kamara attempted to engage in a
15 sophisticated scheme to steal millions of dollars from an
16 innocent victim's bank account. The scheme involved promising
17 hundreds of thousands of dollars of funds that they were
18 attempting to steal to an individual whom they understood to be
19 a corrupt employee of a wire transfer clearinghouse as a bribe
20 to assist them in stealing millions of dollars. Mr. Morgan
21 traveled with Mr. Kamara from Georgia to New York to collect
22 the proceeds of their fraud scheme. The defendant and Kamara's
23 conduct was brazen, egregious and deeply troubling. This is
24 all from the government's submission.

25 Second, according to the government, a sentence within

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1 the stipulated guideline range is necessary to promote respect
2 for the law and to deter Mr. Morgan and others who are
3 similarly situated from participating in financial fraud
4 schemes. In light of the seriousness of the defendant's
5 conduct and his status as an immigrant in the United States, it
6 is critical that the defendant's sentence make plain that there
7 is more risk to potential fraudsters who are foreign nationals
8 than merely being sent home.

9 Although removal from the United States is nearly
10 certain, it would be a collateral consequence of the
11 defendant's criminal conduct. It is neither punitive nor does
12 it provide any meaningful measure of specific or general
13 deterrence. A substantial period of incarceration within the
14 stipulated guideline range is necessary to send a message to
15 both the defendant and others similarly situated that
16 participants and potential participants in fraud schemes, using
17 those who, like the defendant, Mr. Morgan, are not United
18 States citizens, that significant consequences await if and
19 when they are caught participating in such criminal conduct.

20 There are also in the record, although they thankfully
21 are not needed today, waivers signed by Mr. Morgan.
22 Particularly this was in connection with the sentence which we
23 attempted to do two weeks ago where the system failed. So
24 fortunately you don't need those waivers today because we have
25 Mr. Morgan present with Mr. Schmidt, the government, myself, my

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1 judicial assistant, my court deputy and, of course, the court
2 reporter.

3 So we are proceeding today via the court call
4 teleconferencing system. Mr. Morgan is at the Metropolitan
5 Detention Center, and Mr. Schmidt, I don't know where he is,
6 but I can see him clearly, and I know that the government is
7 lurking somewhere in the background, but we don't have him on
8 the screen.

9 Counsel for the government, can you see us?

10 MR. SOBELMAN: No, your Honor. I don't have any video
11 capabilities, but I can hear your Honor clearly.

12 THE COURT: OK. We can hear you. That's great.

13 I've also received and reviewed the presentence
14 investigation report in this case, which was approved on
15 January 9, 2020, along with an addendum and sentencing
16 recommendation of the same date. I have correspondence from
17 defense counsel, Mr. Schmidt, dated April 6, 2020, and I have
18 that aforementioned letter from AUSA Robert Sobelman dated
19 April 13, 2020. Then I have the supplements, particularly
20 Mr. Schmidt's supplement.

21 Counsel for the government, have you seen that too?
22 It is a letter dated May 5, 2020.

23 MR. SOBELMAN: Yes, your Honor. We received it
24 shortly before the proceeding commenced.

25 THE COURT: That's when I got it as well. It contains

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1 what is called a facility evaluation, Metropolitan Detention
2 Center COVID-19 response, which I did have a chance to review
3 before we got on the call.

4 I have to say, it is a very serious document. It is
5 not surprising to me. I've personally become acutely aware of
6 the deficiencies at both the MDC, particularly everybody
7 remembers last year during the winter, the absence of heat,
8 light, hot water. It was just a disaster over there during one
9 of the coldest weeks in the winter. It was so bad that family
10 members and friends were coming to the MDC with blankets so
11 that they could be passed up to their loved ones who were
12 incarcerated.

13 Frankly, it was an unacceptable, beyond unacceptable,
14 condition of an emergency to be sure, but based on a seriously
15 deficient system at core, which I frankly think is still
16 deficient. I think similarly, I regret and am constrained to
17 say, I have similar very serious doubts about the ability of
18 the MCC, who housed basically improperly persons who are
19 detained.

20 I am very, very, very disappointed that the U.S.
21 Attorney General has failed, to my knowledge, to conduct a
22 thorough assessment and investigation of the Bureau of Prisons
23 nationwide. But in particular, this was something he pledged
24 to do at the time of Jeffrey Epstein's suicide at the
25 Metropolitan Correction Center. That was a case that I had,

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1 and that suicide occurred in August of last year.

2 To my knowledge, there have been no forthcoming
3 serious reviews of the living conditions at either the MCC or
4 the MDC, which are only many times compounded by this
5 coronavirus that is plaguing the country, but in particular,
6 the country's prisons.

7 It is an outrage, I have to say, and I'm very
8 disappointed that the Attorney General has not followed through
9 on making a thorough investigation of conditions that those of
10 us in the business, as it were, are all too familiar with, and
11 more importantly, has not implemented appropriate changes.

12 So I was just going to mention from the submission of
13 Mr. Schmidt, the submission itself was prepared by a doctor
14 named Dr. Homer, H-o-m-e-r, Venters, V-e-n-t-e-r-s. It is
15 thoughtful. It is 22 pages long. Right off the bat, on page
16 one, he says that he visited the Metropolitan Detention Center
17 in Brooklyn on April 23, 2020, and was alarmed by the
18 facility's failure to implement simple procedures in line with
19 the Center for Disease Control guidelines that could identify
20 patients who are ill with COVID-19, that could prevent the
21 spread of COVID-19 throughout the facility, that could ensure
22 that high-risk patients received adequate care.

23 Again, right out of the block, he says multiple
24 systemic fractures in the COVID-19 response at the MDC, which
25 is where Mr. Morgan is housed, impeded the facility's ability

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1 to know when people become ill with COVID-19. Most people
2 within the MDC are not being effectively screened for COVID-19
3 signs or systems. It is odd to say the MDC's response to
4 COVID-19 is largely reliant on a broken sick call system that
5 does not function adequately.

6 So I commend the entire report to your consideration.
7 It deserves a thorough evaluation, and more than that, it
8 requires that there be a Federal Bureau of Prisons response to
9 the criticisms that are contained in that report. Such a
10 response is long overdue. It was overdue long before Jeffrey
11 Epstein committed suicide. Long before then.

12 Those of us on the bench in the Southern District and
13 the Eastern District were fully -- not fully, I would say --
14 but anecdotally, for each of our cases, apprised of the
15 unfortunate terrible conditions in these two federal
16 facilities.

17 They are dirty. They are infested with drugs. You
18 can get drugs and other contraband at the drop of a hat. There
19 is violence that goes on. There is an element -- well, I'll
20 stop there for now. I think you get my drift, and I just
21 wanted to mention that and bring it to your attention.

22 So I have a question for Mr. Morgan and defense
23 counsel, and that is, have you each had the opportunity to read
24 and discuss the presentence investigation report in this case?

25 Mr. Schmidt, did you have a chance to go over that

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1 report with Mr. Morgan?

2 MR. SCHMIDT: Yes, I was able to do so, your Honor.

3 THE COURT: Mr. Morgan, you read over that presentence
4 investigation report with your counsel?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do either of you, starting with
7 Mr. Schmidt, have any objections to the content of that report
8 other than ones that you have noted before?

9 MR. SCHMIDT: No, your Honor.

10 THE COURT: Mr. Morgan?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: So then I will return the presentence
13 report to the probation department, which is our practice, and
14 I'm happy at this time to hear from Mr. Schmidt, Mr. Morgan,
15 and from government counsel.

16 MR. SCHMIDT: Your Honor, I think I've covered, to a
17 great extent, discussions of Mr. Morgan's background and the
18 offense conduct and the offense in general, the nature of the
19 offense, how Mr. Morgan got involved in it, who conducted most
20 of the activity.

21 So I don't think I'll need to comment more, unless
22 your Honor has a specific question concerning that, or in
23 response to maybe something that the government says.

24 I will note that your Honor mentioned an assault in
25 the second degree conviction. This was a case when Mr. Morgan

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1 was 15 years old. It was not reported, so I'm assuming that it
2 was a juvenile finding, and as Mr. Morgan said, when he was
3 younger and in high school, he got into a lot of fights, mostly
4 to protect himself. Other than that, the convictions that he
5 has are theft-related convictions, especially in the beginning
6 were things like food, baby clothing, etc.

7 I would note that the warrants were for two pending
8 cases. These are cases that I kept in touch with the lawyers
9 about that he was going to report to those cases when he was
10 released on bail, and until he was picked up by the violation
11 of a probation, which was for illegal parking in Georgia, which
12 was ultimately dismissed, but held on an immigration warrant.

13 So those, he had bail on those cases. Bail was
14 exonerated in those cases because of his ultimate commitment,
15 by being held by immigration, and by being brought up to the
16 Southern District of New York.

17 What I think is, at this point, the only matters that
18 need to be discussed further was, in many ways, covered by your
19 Honor in explaining what is happening at the MDC and the MCC.
20 I note that Mr. Morgan has suffered from severe tooth pain for
21 a number of months. And after I wrote a letter, first an
22 e-mail of the complaint to the MDC and then wrote a letter to
23 your Honor, he actually was able to see a dentist. He was
24 given -- not see a dentist. He was given ibuprofen, I believe,
25 two days in a row, and then he has not received ibuprofen even

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1 since then.

2 This is actually not the only client I have who has
3 had a problem with teeth and has not been able to see a dentist
4 or get anything done. It really appears that the system, as
5 the doctor indicated, is broken. The sick call system. It is
6 even more broken now because of the COVID-19, and so many
7 inmates are not receiving adequate medical care. One doesn't
8 know when Mr. Morgan will even be able to have the problem
9 dealt with.

10 More important than just simply having a tooth that is
11 driving him crazy is what is going to continue for as long as
12 he's incarcerated. My understanding now of what's been
13 happening with inmates who have ICE detainers is one of two
14 things. It seems to be apparently about half of the pretrial
15 detainees who are released on bail because of the coronavirus
16 have not been picked up and are home as pretrial detainees.
17 Others have been picked up and moved to ICE facilities. I have
18 not heard much about inmates who have completed their time,
19 whether or not ICE is picking them up or not.

20 So one of two things is going to happen to Mr. Morgan
21 when he completes his time, either today or a longer time, is
22 that he is either going to be picked up by ICE in a few days
23 upon completion of his time or he is going to be released. And
24 what we're asking your Honor to do is give him a sentence of
25 time served with three months of home confinement so he is

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1 required to remain in his home in Georgia. He'll be available
2 to ICE when ICE gets around to dealing with the problem that
3 they have, and he will deal with his conviction for an
4 aggravated felony and the ultimate result of being deported.

5 My submission that I talked about what I was going to
6 ask for. Almost every day I read -- I have a couple of hours
7 of reading at the end of the day of material that I receive
8 from the federal defender and National Association of Criminal
9 Defense Attorneys and others around the country as to what is
10 happening in our prisons, the lack of honesty and openness in
11 the Bureau of Prisons.

12 Mr. Morgan fortunately is young. Mr. Morgan is not a
13 person who is "at risk," however, they are finding more and
14 more things that are occurring on people who have been found to
15 have the COVID-19 virus that were unknown. There are lung
16 problems, heart problems, stroke problems. So while most
17 people survive to not have long-lasting effects, we don't know
18 who are the chosen ones.

19 On the nature of this case, of course, it would not be
20 inappropriate normally for your Honor to sentence Mr. Morgan to
21 more than time served, which is now about 14 and a half months,
22 not counting the time he might be in further custody from ICE.
23 I can't say that your Honor would be unreasonable to do that.
24 But it seems that we have to start to rethink what is happening
25 in our prisons and the impact of people who are incarcerated.

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1 Pre coronavirus, if someone who had just a little bit
2 of time left to serve -- a year, less than a year -- would go
3 to a facility where it would be humane. They would have
4 substantial freedom in the facility. It would be imprisonment,
5 incarceration, but it would not be a horrendous experience.
6 And punishment may be just.

7 Now, the effect of incarceration is hard to put a
8 number on. Is it twice as bad as it used to be, three times as
9 bad, four times as bad, especially for somebody who going to
10 remain in a detention facility and not in an actual prison, low
11 or medium prison. He is going to be in a detention facility,
12 which is even worse.

13 So we're talking about imprisonment. We're not
14 talking about the same kind of imprisonment that existed two,
15 three, four, five years ago in these facilities. We're talking
16 about much worse, much more difficult, much more dangerous.

17 So we asking are your Honor for a sentence of time
18 served, which is 14 and a half months, and may include time in
19 ICE until they eventually deport him. I don't think it is
20 unreasonable. I think it is appropriate under these
21 circumstances.

22 If your Honor has any other questions concerning the
23 intent for Mr. Morgan, as set forth in the background section
24 of my submission, I would be happy to answer it. I
25 respectfully request that your Honor sentence him to time

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1 served with three years' supervised release, with the first
2 three months of supervision in home confinement in the home
3 where he was living with Mr. Dokie.

4 THE COURT: Do you have the address?

5 MR. SCHMIDT: I do have the address. Perhaps
6 Mr. Morgan --

7 I think I have it in the report here.

8 (Pause)

9 I believe it is 720 Harbor Crossings, Lithonia,
10 Georgia.

11 Is that right, Mr. Morgan?

12 THE DEFENDANT: Yes. As of now, that is accurate.
13 Yes, as of now, that is accurate. I've been incarcerated so
14 long, honestly, I don't know the exact address, but as of now,
15 yes, that's accurate. If it does change, I can let the courts
16 know.

17 MR. SCHMIDT: Your Honor, I did speak to his cousin
18 approximately a week before the last date that we were
19 scheduled for sentencing. He confirmed that Mr. Morgan would
20 be welcome to come back there.

21 THE COURT: So that is Mr. Dokie, D-o-k-i-e.

22 What is that address again?

23 MR. SCHMIDT: It is 720 Harbor Crossings. It is in
24 Lithonia, L-i-t-h-o-n-i-a, Georgia 30058.

25 THE COURT: Now, I take it that if that address is not

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1 current for Mr. Dokie, it is whatever address, does Mr. Dokie
2 still live in Lithonia, Georgia?

3 MR. SCHMIDT: Your Honor, as I said a week before the
4 last hearing, he was living at that address and he confirmed
5 that to me on the telephone.

6 THE COURT: 720 Harbor Crossings. OK.

7 Does anybody have a phone number for Mr. Dokie?

8 THE DEFENDANT: I do have my sister number, Newah
9 Morgan, and she has his number. I don't know his number off
10 the top, but I know my sister number.

11 MR. SCHMIDT: I have it. I just need to find my notes
12 where I wrote it down, because I've talked to him a number of
13 times and his wife.

14 THE COURT: Mr. Morgan, what is your sister's name?

15 THE DEFENDANT: My sister name is Newah Morgan.

16 MR. SCHMIDT: N-e-h-w-a-h?

17 THE DEFENDANT: N-e-w-a-h. Newah Morgan.

18 She is actually, for the record, if I misstate, she is
19 actually willing for me to come to her home also. I just spoke
20 to her yesterday when we had a chance to talk.

21 THE COURT: Do you know her address?

22 THE DEFENDANT: Um, honestly, I do not have the
23 current address right now, just a zip code. She actually gave
24 it to me. I was not able to get it. They was rushing me in
25 here. I was trying to get it. I was not able to get it

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1 because they was rushing me in here.

2 THE COURT: Do you have a telephone number for her?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: What's that?

5 THE DEFENDANT: (404) 556-3128.

6 THE COURT: She lives in Georgia for sure, but what
7 city?

8 THE DEFENDANT: Her zip code, she lives in
9 Lawrenceville, Georgia, and her zip code is the same as the one
10 that is on her letter, which is 30345. That's in the
11 Lawrenceville, Gwinnett County area of Georgia.

12 THE COURT: I got it.

13 OK. Mr. Schmidt, are you through? We'll hear from
14 Mr. Morgan and from the government.

15 THE DEFENDANT: You would like to hear from me now,
16 your Honor?

17 THE COURT: You don't have to, but if you wish to be
18 heard, I'm happy to hear from you.

19 THE DEFENDANT: Yes. Yes, I definitely wish to be
20 heard.

21 Good afternoon everybody that is here today. Um, I
22 would like to start by extending my deepest gratitude to
23 everyone here today and what is presently taking place on our
24 planet. I want to thank your Honor for hearing to my case. It
25 has been 14 months --

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1 THE COURT: Mr. Morgan, you have to slow down a little
2 so the court reporter can get it all down.

3 THE DEFENDANT: OK. All right. I'm starting over.

4 I would like to extend --

5 THE COURT: You don't have to start over. You don't
6 have to start over.

7 THE DEFENDANT: OK. Um, it has been 14 months and
8 three weeks to this exact moment of my arrest that I willingly
9 got involved in this game by accepting a phone call from
10 someone I never met and demonstrates my lack of rational
11 thinking and stupidity.

12 One important lesson life has taught me is to always
13 be man enough to admit when you are wrong. And as the
14 government rightfully stated in its submission, no role in this
15 conspiracy can be considered small. Wrong is wrong no matter
16 how big or small.

17 I can sit here and try to explain what happened, who
18 should take the ultimate blame, but admitting you are wrong
19 with an excuse to follow is still trying to justify your
20 wrongdoings. So I say I was wrong and I deeply apologize.

21 My deepest apology goes out to my kids, having to one
22 day explain to them why Daddy was gone for so long, and maybe
23 forever is something I have to live with. I am so sorry to
24 their mothers for having to provide for them as a single
25 parent. Providing for them as a co-parent is a difficult task

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1 both financially and emotionally, but having to do it alone is
2 something no parent should have to endure. I know this because
3 I've had to live without a father myself.

4 For the past 14 months I have been in prison, I have
5 been dehumanized and treated like an animal --

6 Excuse me. The phone was ringing.

7 For the past 14 months I've been in prison, I have
8 been dehumanized and treated like a number, not a person. I've
9 spent multiple nights crying and asking the creator for mercy
10 on my soul. I have had to live with not being able to see my
11 babies, nor have I seen any family members or friends. I'm
12 sure, as young as my kids are, they have asked themselves, I'm
13 sure as young as my kids are, they have asked themselves, Does
14 Daddy not love me anymore? If so, why has he completely
15 disappeared from me.

16 I know these questions also work because I have had to
17 ask myself those same exact questions in the past. As the
18 world is going through a global pandemic and people are dying
19 by the thousands, not being by my kids' side makes me feel
20 cowardly. Fathers are supposed to be able to protect them at
21 all times. The one who you consider your superhero.

22 Whatever decisions your Honor makes today, I'm sure
23 God will be involved. All I ask is that your Honor please take
24 into consideration that dying behind bars is an outcome that
25 could possibly take place if I have to return to serve more

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1 time.

2 The current conditions of the prison system are worse
3 than ever. We have been on lockdown for the past month and a
4 half. We are only allowed three hours a week to take a shower,
5 talk on the phone, and respond to e-mails. If your Honor feels
6 in any way that I have not learned my lesson in the matter, I
7 respectfully ask to be placed on home confinement to complete
8 the rest of my time.

9 On home confinement, I will not be able to escape from
10 ICE. They will be able to get me from my home. They already
11 granted me bond, but I can assure your Honor and the government
12 that I have used every second, minute, hour, day and months to
13 realize prison is not a place for me or anyone who is looking
14 to improve their life.

15 This experience has allowed me to converse with people
16 who would never have a chance to unit with their family
17 members. Just the thought of that scares me to death. I have
18 also realized that not any opportunity to make money -- I also
19 realized that any opportunity to make money illegally that
20 comes your way is not worth risking your freedom. A pessimist
21 sees difficulties in every opportunity. An optimist sees the
22 opportunity in every difficulty. I stand before you today an
23 optimist.

24 Lastly, I would ask your Honor to please take into
25 consideration that I have not received any disciplinary tickets

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1 for the 14 months I've been incarcerated. I've used this time
2 to plan things I plan to accomplish in life and the steps I
3 need to take to reach those goals.

4 If God allows me to stay in America once I get out, I
5 will enroll in a trade school to become an electrician. I have
6 also used this time in jail to earn three certificates. I have
7 also used this time in jail to earn three certificates.

8 I conclude my speech by telling my attorney that you
9 are greatly appreciated. You have treated my case as if I came
10 out my pocket to pay you thousands of dollars. I have never
11 once tried to get in contact with you and not received an
12 answer. You went above and beyond to see to it that we are
13 always on the same page. You are a true definition of a legal
14 counsel, and for that, I will always have a place -- you will
15 always have a place in any heart.

16 Thank you, your Honor, for your time and
17 consideration.

18 THE COURT: You're welcome.

19 OK. How about the government, Mr. Sobelman?

20 MR. SOBELMAN: Your Honor, I believe that the
21 government responded to the points made by Mr. Schmidt in our
22 submission. If your Honor has any questions or wants me to
23 address anything in particular, we would be glad to do so, but
24 if not, we can rest on our submission.

25 THE COURT: OK. I do have a concern about what

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1 happens with Mr. Morgan when his sentence is over, whether that
2 be today or in a month or a year or whatever.

3 Do you have any more clarity about that than
4 Mr. Schmidt as to what happens to him?

5 MR. SOBELMAN: No, your Honor.

6 In ordinary times, we would expect that ICE would
7 promptly take him into custody on the completion of whatever
8 sentence your Honor imposes. I haven't been able to determine
9 what precisely ICE would do in this case. I suspect they would
10 be more likely to take him into custody than those who are on
11 pretrial release, because Mr. Morgan will have no further
12 proceedings, at least in the federal system, before being put
13 in deportation proceedings. But it is not certain.

14 I'll note that Mr. Morgan has not consented to a
15 judicial order of removal. We offered that to him and he
16 declined to do that. I understand he certainly doesn't have
17 to, and he may happen to seek an order to try to stay in the
18 United States despite this conviction, but that is another
19 aspect that leaves some uncertainty.

20 THE COURT: When he gets released from the MDC, they
21 release him, just say, here's the door and good luck, or do
22 they take him to Georgia or put him on a bus?

23 MR. SOBELMAN: There are a couple of different
24 scenarios. One, assuming he has a detainer from ICE, which I
25 think is a fair assumption, the marshals generally give ICE a

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1 certain period of time -- I think it is often a couple of days,
2 sometimes slightly longer -- to retrieve the inmate or detainee
3 and take them into custody. So that is one scenario.

4 Another scenario is that I take Mr. Schmidt's word
5 that the state proceedings have concluded. I just don't know
6 the details myself. It is possible that, for example, his
7 parole violation has a hold on him or detainer on him and that
8 he is put into interstate transport back to Georgia in order to
9 see through the end of that proceeding before immigration
10 decides to act.

11 So there are a couple of different options. Even if
12 there were a state detainer and an ICE detainer, if both waived
13 their interests, given the circumstances, of taking Mr. Morgan
14 into custody now, which would be in their discretion, then
15 Mr. Morgan would be released after a short hold time from the
16 facility, and he would go wherever your Honor -- presumably go
17 wherever your Honor ordered him to go to serve the beginning of
18 his supervised release.

19 But we really won't know what happens until his
20 sentence is completed and the relevant authorities then make a
21 decision about what, if anything, they want to act on.

22 THE COURT: Do they hold him at MDC while they make
23 that determination or someplace else?

24 MR. SOBELMAN: My understanding is they are held
25 whenever they have been for, I think it is often a couple of

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1 days, while they give the detaining parties time to pick him
2 up.

3 THE COURT: OK. That's very helpful. Thank you.

4 I'm going to then adopt the findings of fact in the
5 presentence investigation report, unless defense counsel has
6 any remaining objections that have not been submitted.

7 MR. SCHMIDT: I have no remaining objections.

8 Your Honor, if I may, I can add a little bit to what
9 is going to happen with Mr. Morgan. It is unlikely, at this
10 period of time whether there is a hold or not with the state,
11 they are actually going to pick him up because of what is going
12 on with the coronavirus.

13 Mr. Morgan indeed has a hold because he was brought up
14 by writ to the Southern District. The government brought him
15 up by writ. So he is, indeed, an ICE detainee as well, and so
16 the real question is whether or not ICE is going to pick him up
17 or not.

18 I do know for certain that they have picked up some
19 people who were finished with their sentence. I don't know if
20 they have picked up all or not, but I know they have picked up
21 some.

22 If he is released from MCC, MDC, and no one picks him
23 up, then I will actually have to prepare an order for your
24 Honor's signing to get to the United States Marshal Service so
25 they can provide airfare to Mr. Morgan so he can return to

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1 Georgia.

2 I also need to get an order from your Honor
3 identifying him because he has no identification records, but
4 I've done that previously with a client who was released from
5 jail. It makes things a little more complicated because of the
6 pandemic, but it's been done and I know how to do it.

7 THE COURT: You do that today or you do it when?

8 MR. SCHMIDT: Well, he's not going to be released
9 today. He will know by, I'm guessing, Thursday, perhaps
10 Friday, whether he is getting released or not. If your Honor
11 does sentence him to something to the nature of time served,
12 what I'll be doing is preparing those orders now and holding on
13 to them or maybe getting them signed by your Honor to have them
14 available if he is released.

15 I have someone who I view as a paralegal who lives in
16 Brooklyn that would be able to meet him, if he is released, at
17 the facility and physically help him get to either the U.S.
18 Marshal service or to the airport, depending on how we're
19 dealing with our situation.

20 THE COURT: You're saying that, from what you
21 understand, they are really down to two options; one is whether
22 ICE determines to pick him up and take him back to Georgia or
23 not?

24 Are those the options?

25 MR. SCHMIDT: I believe that is the alternative.

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1 THE COURT: You're saying that, so whenever his
2 sentence is over, he immediately starts a sentence of
3 supervised release, as you'll hear in a minute, and the
4 question is how is he going to get and what those -- if one of
5 the conditions of supervision is going to be that he live with
6 either Derrick Dokie or his sister in Georgia, so he is going
7 to have to get to Georgia, obviously, to be able to complete
8 his sentence.

9 Now, is he subject to any quarantine provisions upon
10 leaving MDC and going somewhere else?

11 MR. SCHMIDT: I don't know. I have not been told that
12 he personally has any quarantine restrictions. Whether the MDC
13 does something prior to release, I don't know. I know in the
14 past, some judges who have released people either on
15 compassionate release or bail have put orders in requiring the
16 immediate release of the person, as opposed to the Bureau of
17 Prisons at that time a policy of holding somebody in isolation
18 for 14 days before they release him.

19 So I know that a court order, if that is what they are
20 going to do, has worked. And, indeed, if I hear that MDC is
21 doing that, I would come back to your Honor with a court order
22 to have him released.

23 THE COURT: All right. Any further objections to that
24 presentence report from you, Mr. Morgan?

25 THE DEFENDANT: No, your Honor. No further

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1 objections.

2 Just lastly, just to state that without excuse, I've
3 never in my life thought about committing a crime, and this
4 unfortunately is what is going to ultimately, if it does, get
5 me deported away from my children and is deeply devastating.
6 But, you know, these are the consequences I unfortunately have
7 to live with because of the amount in which this crime was
8 conducted.

9 As far as the ICE hold, a prior was only because I
10 stated that I was a citizen, assuming that I was because my mom
11 applied and told me that she got it, and I stated I was a
12 citizen. So ICE put a hold on me with a bond of \$25,000.

13 And then also to add with this case, the amount being
14 an aggravated felony is what is ultimately possibly going to
15 get me deported back to a country I haven't been to my entire
16 life basically.

17 MR. SCHMIDT: If I may, I confirmed that in our
18 conversations that his original ICE detention was because he
19 said he was a citizen because, based on our discussions, he
20 believed his mother obtained citizenship before he turned 18.

21 We believed that he was a citizen. It took us an
22 awful long time to get the information from ICE that his mother
23 was denied as opposed to granted.

24 THE COURT: OK. All right. I am prepared to go
25 forward. Let me preview the sentence and then I will impose

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1 it.

2 Hold on one second. Chelsea, do we have time to
3 continue? How much time do we have here?

4 LAW CLERK: I requested an hour and a half for this
5 proceeding.

6 THE COURT: Counsel, I wonder if we should not,
7 instead of having a preview of the sentence, just move to
8 imposing the sentence so we make sure that we complete the
9 sentencing today.

10 Is that OK with you?

11 MR. SCHMIDT: That is fine, your Honor.

12 THE COURT: Mr. Sobelman?

13 MR. SOBELMAN: Yes, your Honor.

14 THE COURT: OK. So here is the sentence that I am
15 imposing. The guideline range is 41 to 51 months. The
16 stipulated guideline range is 33 to 41 months in the plea
17 agreement.

18 Having considered the Sentencing Reform Act of 1984
19 and having reviewed factors as 18, United States Code, Section
20 3553(a), it is the judgment of the court that Terrance Morgan
21 is hereby committed to the custody of the Bureau of Prisons to
22 be imprisoned for a term of what we call time already served,
23 just approaching 15 months, if you consider MDC and other ICE
24 incarceration.

25 As soon as he is released from imprisonment, if he

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1 remains in this country and is not deported, then I'm imposing
2 a term of four years of supervised release subject to the
3 following conditions: That he not commit another federal,
4 state or local crime; that he not illegally possess a
5 controlled substance; that he refrain from any unlawful use of
6 a controlled substance; that he submit to one drug test within
7 15 days of placement on supervision and at least one scheduled
8 drug test thereafter, as may be directed by a probation
9 officer.

10 In addition, he is required to comply with what are
11 called standard conditions 1 through 12. Those include, among
12 others, that he not possess or have access to a firearm,
13 ammunition, destructive device or dangerous weapon, which is
14 defined as anything that was designed or modified for the
15 specific purpose of causing bodily injury or death to another
16 person.

17 Plus the following special conditions: He will be
18 supervised in his district of residence immediately upon
19 release. He is required to live in Georgia with, first of all,
20 Mr. Derrick Dokie, D-o-k-i-e, last known address 720 Harbor
21 Crossings, Lithonia, L-i-t-h-o-n-i-a, Georgia 30058, described
22 as a cousin, or with his sister, pronounced N-e-w-a-h Morgan,
23 no address except that she lives in Lawrenceville, Georgia
24 30034, and her telephone number area code (404) 556-3128. He
25 is subject to three months of home confinement at either

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1 Mr. Dokie's or his sister's, and the first 14 days of
2 confinement there are to be self-quarantined.

3 He is to report to the probation department. Defense
4 counsel will give him the number of the probation department in
5 New York as soon as you can. He is to report to probation by
6 telephone, if not in person, within 24 hours of release from
7 custody.

8 He will also be required to participate in weekly
9 therapeutic counseling by a licensed therapist. He may be
10 required to contribute to the costs of services rendered via
11 copayment in an amount to be determined by the probation
12 officer based on ability to pay and availability of third-party
13 payment.

14 He is also required, during the term of four years'
15 supervised release, to participate in a program approved by the
16 probation office for substance abuse. That program shall
17 include testing to determine whether he is using drugs or
18 alcohol.

19 He's also required to cooperate fully with the
20 Department of Homeland Security Bureau of Citizenship and
21 Immigration Services in connection with any proceedings that
22 they may bring to determine his status in the United States,
23 and he's required to abide by their rules and regulations.

24 I am not imposing a fine. None is recommended in the
25 presentence materials.

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1 I am not imposing restitution because there is no
2 victim within the meaning of 18, United States Code, Section
3 3663 or 3663(a).

4 I am imposing a special assessment of \$100, which is
5 mandatory and actually due immediately.

6 The reasons for the sentence are that I have
7 considered the guideline range and the other factors that I
8 mentioned at the outset of 18, United States Code, Section
9 3553(a). I don't disagree that the crime here was a serious
10 one, but I do feel that the purposes of deterrence, general and
11 specific, have been met and are being met by this sentence. I
12 think that the term of incarceration, the amount of
13 incarceration that he has served already, is adequate for the
14 purposes of coming up with a fair and reasonable sentence.

15 I do point out, again, the conditions of the MDC
16 during this, particularly during this difficult coronavirus
17 time, but also across the board even before the coronavirus
18 erupted.

19 The conditions of home confinement for three months
20 and quarantined for the first 14 days I think are significant,
21 and the therapeutic counseling and drug treatment will be the
22 most beneficial aspect of this remaining sentence.

23 I also note that the separation of Mr. Morgan from his
24 children has been severe, and I've taken that into
25 consideration as well.

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1 Defense counsel, you're going to have to, as you
2 mentioned before, play the role of submitting any proposed
3 orders that may be necessary to implement this sentence, and
4 also to direct and guide Mr. Morgan to Georgia if he is
5 released. I'm sure you will do that ably.

6 Does either legal counsel know of any reason why this
7 sentence should not be imposed as so stated, starting with the
8 government?

9 MR. SOBELMAN: No, your Honor.

10 THE COURT: How about the defense?

11 Mr. Schmidt, are you aware of any legal --

12 MR. SCHMIDT: No, your Honor. No objection.

13 THE COURT: Then I hereby order that the sentence be
14 imposed as so stated.

15 Mr. Morgan, to the extent that you have not already
16 waived your appeal rights pursuant to the plea agreement, now
17 I am talking about the agreement dated July 15, 2019, in which
18 you did waive appellate rights, you agreed to waive your right
19 to file a direct appeal.

20 You also have agreed to waive your right to bring a
21 collateral challenge, including but not limited to habeas
22 petitions, under United States Code, Sections 2255 and/or 2241,
23 of any sentence that is within or below the stipulated range of
24 33 to 41 months. This sentence is clearly below that
25 stipulated guideline range.

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1 You also agreed to waive your right to challenge your
2 conviction or sentence on direct appeal or through litigation,
3 as I mentioned, under Sections 2255 and 2241, on the basis of
4 any actual or perceived adverse immigration consequences,
5 including removal, which result from your guilty plea and
6 conviction.

7 So apart from those waivers which you have entered
8 into, Mr. Morgan, I notify you that if there are any other
9 rights that I have failed to mention that apply, then you would
10 have the right to appeal your sentence. If you are unable to
11 pay the cost of an appeal, you have the right to apply for
12 leave to appeal *in forma pauperis*.

13 So the question to you, Mr. Morgan, is do you
14 understand the waivers of appeal that you have agreed to?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand your appeal rights
17 generally at this point?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Question for the government: Are there
20 any aspects of this case that you are seeking to resolve or
21 dismiss at this time?

22 MR. SOBELMAN: Yes, your Honor.

23 The government moves to dismiss Count Two of the
24 indictment with respect to this defendant.

25 THE COURT: The application is granted.

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1 Finally, starting with the government, did you wish to
2 add anything to today's sentencing proceeding?

3 MR. SOBELMAN: Your Honor, I just want to make sure
4 the record is clear, especially because I'm only on the phone,
5 that your Honor, Mr. Schmidt and Mr. Morgan could all see each
6 other on video conference, as well as hear each other on audio?

7 THE COURT: Fair enough.

8 Mr. Schmidt?

9 MR. SCHMIDT: Yes, I was able to see both your Honor
10 and Mr. Morgan.

11 THE COURT: Mr. Morgan, you were able to see me and
12 your lawyer?

13 THE DEFENDANT: Yes, I was able to see both your Honor
14 and my attorney.

15 THE COURT: OK. Let me ask it in another way,
16 Mr. Schmidt. I think I know the answer.

17 But is Mr. Morgan, in your understanding, agreeable to
18 waiving any rights that he might have as a result of our
19 participating today on this court call video-audio system that
20 included the individuals just mentioned, but did not include
21 the Assistant U.S. Attorney on the video portion?

22 MR. SCHMIDT: Yes, he does, your Honor.

23 THE COURT: Mr. Morgan, is that right, you're waiving
24 any rights that you might otherwise have as a result of our
25 proceeding today in this tele-audio method as opposed to in a

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1 live courtroom?

2 THE DEFENDANT: Yes, that's accurate, your Honor.

3 THE COURT: OK. Mr. Sobelman, does that work?

4 MR. SOBELMAN: Yes, your Honor.

5 I'll also just note that the public access number was
6 docketed prior to this proceeding, and that the government has
7 learned from the agent on this case that that number has been
8 working and he has been able to attend the proceedings, as I
9 imagine some others have.

10 THE COURT: I don't know who is attending, but we made
11 sure that the access number was available to the media, to the
12 public, friends and persons interested in the case, to the best
13 of our abilities. I think we were successful.

14 Anything else that you wanted to add, Mr. Schmidt?

15 MR. SCHMIDT: Nothing further to add, your Honor.

16 THE COURT: Nothing further from Mr. Sobelman?

17 MR. SOBELMAN: That's correct, your Honor.

18 THE COURT: How about from you, Mr. Morgan?

19 THE DEFENDANT: From me, your Honor, I just want to
20 extend, as I stated, my deepest gratitude for rendering that
21 sentence, and I will be sure to use this as a grateful life
22 lesson for me and my kids. Thank you very much.

23 THE COURT: You're welcome, and I wish you the best of
24 luck going forward.

25 THE DEFENDANT: Thank you.

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1 THE COURT: I think we're adjourned then.

2 MR. SCHMIDT: Thank you, your Honor.

3 THE COURT: Thanks very much, everybody.

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